

REMARKS

The remainder of this Amendment is set forth under appropriate subheadings for the convenience of the Examiner.

Amendment to the Specification

The related applications paragraph has been updated to reflect the status of the applications cited therein. No new matter has been added.

Rejection of Claims 1 and 6 Under Obviousness-Type Double Patenting

Claims 1 and 6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 10 of U.S. Patent No. 6,749,496 in view of Loos, et al. (U.S. Patent No. 5,343,656) and over Claim 10 of U.S. Patent No. 6,749,496 in view Bates (U.S. Patent No. 3,685,215), respectively. Applicants respectfully disagree with the Examiner because this obviousness-type double patenting rejection is *not* proper for the reasons set forth below.

The instant application is a divisional application of U.S. Application No. 10/260,014 which was filed March 20, 2003 and issued as U.S. Patent No. 6,749,496 June 15, 2004. The instant application was filed April 1, 2004 before the parent application issued, as a result of the restriction requirement made July 18, 2003 on the parent application. The instant application claims non-elected Claims 11-15 and 17-18 of the parent application, and Claims 1 and 6 of the instant application correspond to Claims 11 and 17 of the parent application, respectively. The restriction requirement was not withdrawn by the Examiner before the patent issued June 15, 2004. The guideline in MPEP 804.01 as to obviousness-type double patenting rejections under 35 U.S.C.121 prohibits the use of an obviousness-type double patenting rejection against any divisional application filed as a result of a restriction requirement when the requirement for restriction was not withdrawn by the Examiner before the patent issues:

The third sentence of 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement

for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent.

Therefore, this obviousness-type double patenting rejection of Claims 1 and 6 is not proper. Reconsideration and withdrawal of this rejection are respectively requested.

Allowable Subject Matter

Claims 2-5 and 7 are objected to as being dependent upon a rejected base claims. But the Examiner stated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As discussed above, the obviousness-type double patenting rejection of Claims 1 and 6, from which Claims 2-5 and 7 are dependent, respectively, is not proper. Therefore, reconsideration and withdrawal of this objection are respectively requested.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By _____
N. Scott Pierce
Registration No. 34,900
Telephone: (978) 341-0036
Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated:

4/6/05